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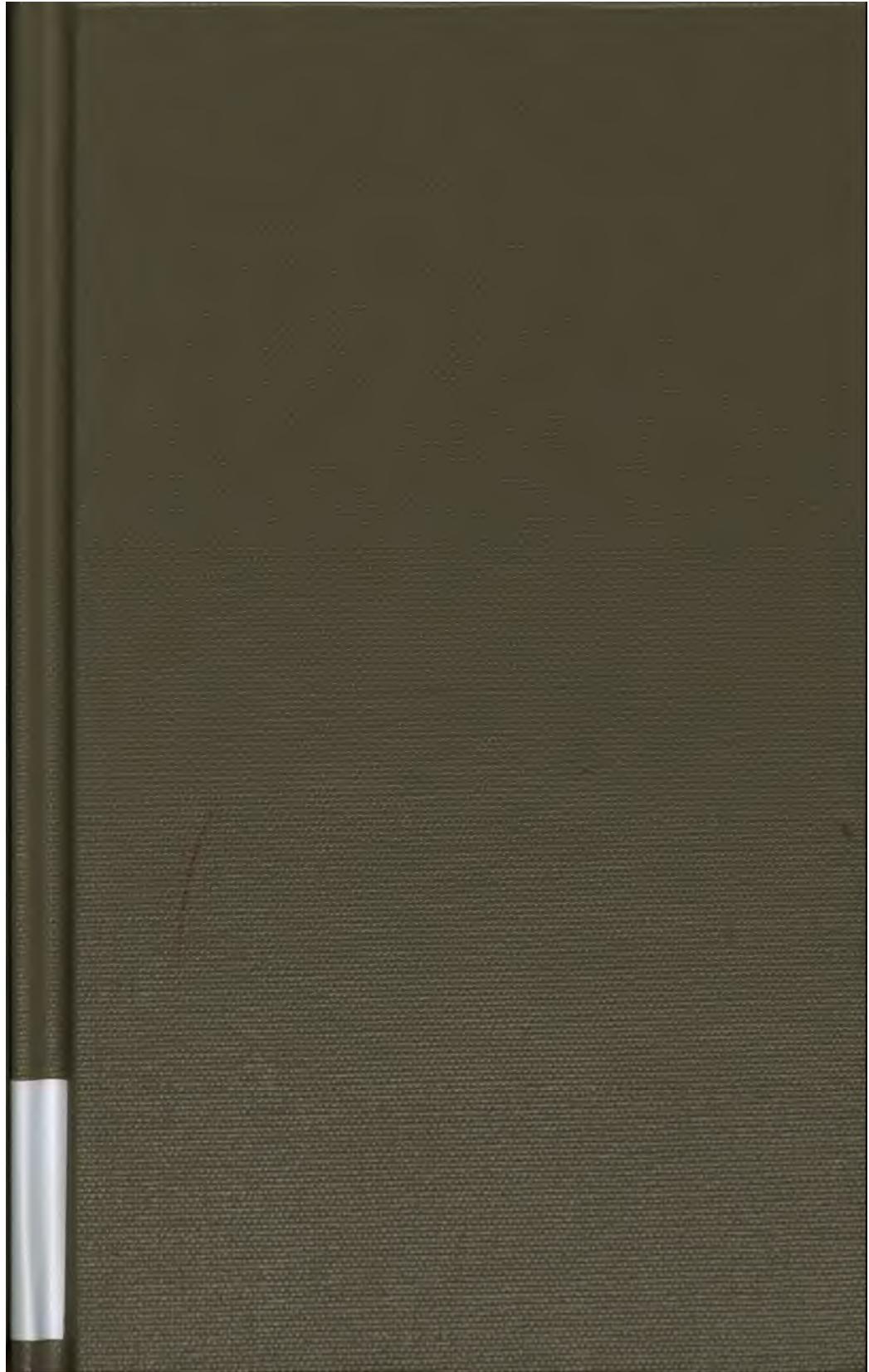
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In Memoriam



Morrison Renwick Waite

Chief Justice of the Supreme Court
of the United States

1874-1888

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In Memoriam

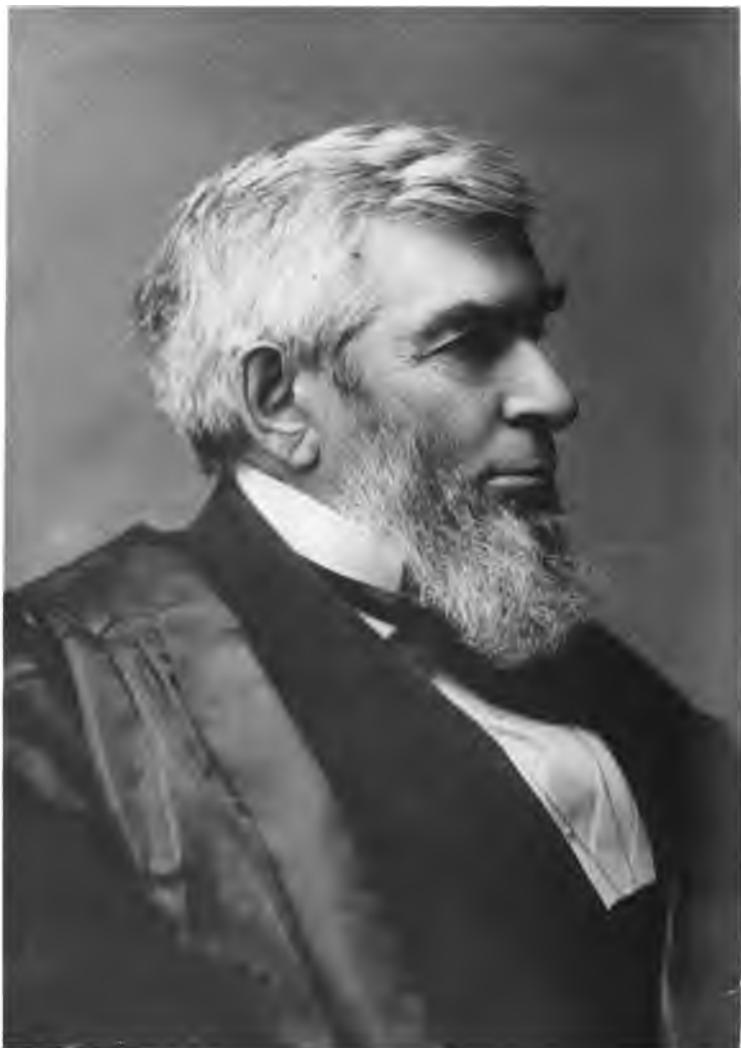


Morrison Remick Waite

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CHIEF-JUSTICE WAITE

BORN NOVEMBER 29, 1816

DIED MARCH 23, 1888



MEMORIAL BEFORE THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW-YORK



PROCEEDINGS AT THE MEETING OF THE BAR OF THE
CITY OF NEW-YORK, HELD MARCH 31, 1888



PRINTED FOR THE ASSOCIATION
1890

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AT a meeting of the Executive Committee of the Association of the Bar of the City of New-York, held November 8, 1889, Mr. Charles C. Beaman having read to the Committee the Memorial which at its request he had prepared of the late Chief-Justice Waite, and having at the same time handed to the Committee a revised report of the proceedings of a meeting of the Bar of the City of New-York, held at the United States Circuit Court Rooms on the 31st of March, 1888, and which had not been printed, the Committee, on motion of Mr. Francis L. Stetson, resolved that Mr. Beaman be asked to prepare for publication the Memorial read by him and also the proceedings of the meeting of the Bar, and that two thousand copies thereof, with a suitable portrait of Chief-Justice Waite, be printed by the Association, and that a copy be presented by him in its behalf to the Supreme Court of the United States.



MEMORIAL BY MR. BEAMAN.

MORRISON RENWICK WAITE was born at Lyme, Connecticut, November 29, 1816, was graduated at Yale College in 1837, was admitted to the Bar in Ohio in 1839, and continued to practice law at Toledo until 1874, when, at the age of fifty-eight, he became Chief-Justice of the Supreme Court of the United States. He took the oath as Chief-Justice on the 4th of March, 1874, and sat in Court for the last time on March 19, 1888. He died of pneumonia four days later at his home in Washington.

While Mr. Waite was in college his father, Henry Matson Waite, was one of the Judges of the Supreme Court of Connecticut, and afterwards became its Chief-Justice.

In Ohio Mr. Waite from the beginning found abundant opportunities as a lawyer. He was actively employed in consultation and before judges and juries. In political association he was first a Whig and afterwards a Republican. He was a member of the State Legislature. He declined to be appointed Judge of the Supreme Court of Ohio. He failed of election as Member of Congress. In 1871 he was appointed by President Grant one of the counsel to represent the United States before the tribunal at Geneva, for the settlement of the so-called Alabama claims, and for the next year he did his full share of the work, and should receive his full share of the credit for the favorable award received by the United States from that tribunal. Mr. Waite then returned to his office and practice at Toledo. He was soon chosen a member of the Con-

stitutional Convention of the State of Ohio, and while presiding over that Convention as its President, he, on the 6th of November, 1873, learned that he had been nominated by President Grant as Chief-Justice of the Supreme Court of the United States. His nomination was confirmed by a large favorable vote, and he received his commission on the 21st of January, 1874.

His selection as counsel at Geneva and his nomination as Chief-Justice each came to him unsought. The offices had sought the man. Esteemed by his fellow-citizens, trusted by his clients, he was in Ohio well known, and especially was he well known to lawyers there, and to many lawyers elsewhere who had been glad to avail themselves of his professional services.

He took his seat as Chief-Justice on March 4, 1874, and had never until then appeared before that Court, except when on his return from Geneva he had been admitted to practice on motion of Mr. Cushing, one of his associates.

The first opinion of Mr. Waite is reported in 19 Wallace, page 490, and it happened that in that case, Mr. Fuller, now Chief-Justice, was of counsel. For the next fourteen years Mr. Waite was never absent from the sessions of that Court, except during his sickness in 1885. By nature and by inheritance he was well adapted to preside over the Court, both in its sessions and in its conferences. No counsel ever received from him an undeserved reproof, and many a young attorney can testify to his encouraging attention and words.

Mr. Waite had had an extensive and general practice; he had the kindest nature; he was welcomed by the Court.

In his remarks to the Court after the death of Justice Clifford, in 1881 (104 United States, page xviii.), he recalls and makes record of the cordial and affectionate greeting given him by Mr. Clifford, then the Senior Associate Justice, who for months after the death of Chief-Justice Chase had presided over the Court.

Fourteen years after this kindly greeting from Justice Clifford, Justice Miller, who, since 1862, has been a member of the Court, pays his tribute to Chief-Justice Waite, then deceased, in these words:

"The oldest members of this Court know of no one who was better fitted to discharge the administrative duties of the office of its Chief-Justice, or whoever did so with more acceptability to his associates and to the public at large."

An examination of the forty-one volumes of reports from 19 Wallace to 126 U. S., inclusive, will show the great number of opinions written by Chief-Justice Waite—six hundred and thirty-three in all.

He wrote nearly all the opinions relating to the rules of the Court, with reference to the jurisdiction of the Court in cases originating in the United States Courts, or removed to the United States Courts from the State Courts. His opinions are found in cases arising under Customs laws, under Patent laws, and under the Public Land laws. He gave many opinions in cases of commercial law; in cases involving the rights of railroad and other corporations, and, as Chief-Justice, he wrote many of the opinions which announced the judgment of the Court and settled the rights of citizens and of States under the 14th and 15th Constitutional Amendments, and under the legislation subsequent to 1865 to enforce certain rights under these Constitutional Amendments.

Note his opinion in 21 Wallace (case of Minor) as to the right of women to the suffrage;

In the 92 U. S. (cases of Reese and Cruikshank) as to the interpretation of the 15th Constitutional Amendment, and as to the constitutionality of Acts of Congress passed with reference thereto;

In the 94 U. S. (case of Munn) as to the right of States to regulate elevator charges;

In the same volume (case of Peck) as to the right of States to regulate railroad charges;

In 96 U. S. (case of West. Union Tel. Co.) as to the right of States to prohibit interstate telegraph lines;

In 99 U. S. (Sinking Fund cases) as to the rights of the United States and of the Railroad Companies under the so-called Thurman Act;

In the 108 U. S. (case of N. Y. vs. La.) as to the right of the State of New York to acquire control of claims of its citizens against the State of Louisiana, and sue therefor in the Courts of the United States;

In the 120 U. S. (case of Baldwin) as to the rights of the Chinese under existing treaties.

He did not often dissent in conclusion from the majority of the Court, but when he did his opinions show the earnestness of his conviction. All his opinions are simple in style, clear in statement, direct in argument, and certain in determination.

The 126th volume of the United States Reports contains no case except the Bell Telephone cases. The argument of these cases had taken the time of the Court for weeks, their determination had evidently occasioned long discussions in the Conference Room, and the Chief-Justice undertook the writing of the opinion to express the views of the Court. The cases involved intricate questions of science, perplexing questions of fact, and novel questions of law, and their examination and determination occupied him for months. He finished his opinion on Saturday, November 17, could not be dissuaded, though sick, from going to the Court on Monday to read it, and on Friday he died.

All the Judges of the Court did not agree as to the facts in those cases, but electricians and lawyers and the other judges will say that that opinion of Chief-Justice Waite was, as a statement of the principles of science and of the law therein involved, a masterpiece.

This 126th volume of the United States Reports also contains the proceedings in Congress and in the Court in memory of the dead Chief-Justice, and there we can read what a record of affection and esteem Mr. Waite had made since he came in 1874, almost a stranger to that Court.

The years in which he presided over the Court had been eventful, he had administered the oath of office to Presidents Hayes, Garfield, Arthur, and Cleveland; he had given opinions in many cases which had involved most important questions as to the rights of citizens and of States.

He died loved by many friends, esteemed by every one who knew him, honored and mourned by all parties, and by the whole country. Some may think that the Supreme Court has had a more learned or a more brilliant Chief-Justice, but few will claim that it ever had a better one.

On May 31, 1878, this Association was honored by having Chief-Justice Waite as its guest. It now pays this tribute to his memory.





MEETING OF THE BAR, MARCH 31, 1888,
IN MEMORY OF CHIEF-JUSTICE WAITE.



MEETING of the Bar of New-York City was held in the United States Court Room, on Saturday, March 31, 1888. On motion of ex-Judge William G. Choate the following-named gentlemen were chosen officers of the meeting:

President: The Honorable WILLIAM J. WALLACE.

Vice-Presidents: The Honorable E. HENRY LACOMBE.

The Honorable CHARLES L. BENEDICT.

The Honorable ADDISON BROWN.

The Honorable CHARLES H. VAN BRUNT.

The Honorable JOHN SEDGWICK.

The Honorable RICHARD L. LARREMORE.

Secretaries: CHARLES M. DEXTER, Esq.

ROBERT D. BENEDICT, Esq.

FREDERICK H. BETTS, Esq.

Mr. STEPHEN A. WALKER, United States District Attorney, said:

MR. PRESIDENT:

The occasion of this meeting is the recent death of Morrison Renwick Waite, late Chief-Justice of the Supreme Court of the United States—the seventh in succession upon that bench during the one hundred years since the adoption of the Federal Constitution. He was commissioned to this high office on the 21st of January, 1874, and took his seat upon the bench on the 4th of March, subsequently writing the opinion of the Court in the first case heard upon that day. He died in Washington in the early morning of the

23d of the present month, after an illness so brief and so studiously concealed from public knowledge, in kindness to the absent members of a dissevered family, that the whole country was shocked at the sudden and sad announcement.

Such is the strength of tradition among the members of the profession, and such the reverence for the high office now vacant, that I suppose under any circumstances, even of intellectual unfitness or actual misconduct on the part of its occupant, his death would not be allowed to pass unnoticed by the Bar. Mere respect for the office, would, I say, call us together and demand expression in any instance. How much more expressive is the event when not only the office is considered, but when, as in the present instance, it concerns one whose uprightness of character, whose good understanding, whose equable temperament, whose love of labor, made the discharge of its duties secure against all dangers from sloth, from flighty intellectual aberrations, or from any assaults upon personal rectitude.

Chief-Justice Waite was not well known to members of the profession at the time of his appointment. Though he had been concerned in one case of supreme importance and of an international character, he had not what we commonly call "a national reputation," which means apparently that Washington, or some central city, must be either the theatre of one's operations, or the distributing point of information in regard to them. But he was not unknown in his own State, and his appointment was not only a compliment to the sagacity of him who made it, but to the whole body of the profession as well. We sometimes forget, Mr. Chairman, that there are so many well-trained, keen, and rugged intellects outside the glare of public life, discharging all over the country, with distinguished fidelity and skill, the duties of professional life.

It is not my office to enter upon any analysis of the intellectual characteristics of the late Chief-Justice, or to measure in terms of encomium his contributions to the great body of the law, much less to speak of those social and personal traits which are best illustrated in the confidence of intimate friendship. Others will do this. The members of the Bar at such a time instinctively turn to those of our associates whose gifts of facile speech have found illustration in every exigency of human experience, and we say to them, speak for us. These are large themes which now concern us. They touch all the sentiments of humanity. There is no controversy

here. Labor in our libraries over questions of law and practice furnishes no equipment for the present duty. What we want to hear is the strong flow of loving words from broad intellects and active sensibilities, by which our own emotions may be enkindled, and the occasion be made to reach that high plane of dignity and thought which the subject demands.

Such men are here present, and I will not invade their province to comment upon the life now ended — a life

“Rich in the world’s opinions and men’s praise,
And full of all we could desire but days.”

I have the honor to present and move for adoption the resolution which I will now read:

The Bar of the City of New-York, assembled to commemorate the public life and to deplore the sudden death of the Honorable Morrison R. Waite, late Chief-Justice of the Supreme Court of the United States, bear willing witness that in the administration of his great office he has maintained its traditions of integrity, industry, ability, and unvarying courtesy, and that the exemplary excellence of his personal life and character shed additional luster on the record of his great public services.

Mr. JOSEPH H. CHOATE said :

MR. PRESIDENT :

My brethren of the Bar have requested me to second these resolutions and to express in a few words their deep sense of the loss that the profession and the country has sustained in the death of the Chief-Justice.

I think, sir, that the universal tribute that has already been paid to his memory throughout the land bespeaks the popular sense of his value and his services to the country; for I suppose that in this vast area, occupied by these sixty-five millions of people, there is not a journal that has not recorded his death with an emphatic appreciation of his services; there is not a single court that has not adjourned out of respect to his memory, nor one intelligent lawyer that has not — I will not say felt — but actually expressed a personal sense of sorrow at his loss.

I shall not undertake, Mr. Chairman, in the presence of all these who knew him so well, to analyze his judicial character, but there

are some obvious observations which a casual study of his life and character suggest that it may not be improper to offer.

The press, Mr. Chairman, with its universal knowledge of men and things, has presumed generally to say that our late Chief-Justice was not to be classed among the great jurists of the English tongue. But, sir, if we can judge him by what he has done, there may be some ground for qualifying the generality of that opinion. To have worthily filled the highest judicial office in the country, and perhaps it is not too much to say, in view of its peculiar constitutional functions and duties, the highest and greatest judicial office in the world,—to have worthily worn for fourteen years the mantle that before his time had graced the shoulders of John Jay, and John Marshall, and Roger B. Taney, and Salmon P. Chase,—to have commanded from the beginning to the end of his judicial career, growing all the time in strength and power, the universal confidence of the profession and the community,—to have risen fully equal on all occasions to the great public and constitutional questions that came before him,—to have commanded the confidence and deference of his great associates, is certainly laying some claim to a place among the great jurists of our country and our race.

I think, sir, that his training and discipline before he was called to this exalted station naturally fitted him to fill and grace and magnify the office to which he was called. His birth and breeding in a homely New England household on the shores of the Connecticut, where he was trained up to the idea that duty is the beginning and object and end of life, and that the reward of each duty, well fulfilled, is the power and the opportunity to discharge the next, his liberal training at Yale College, his energetic and enterprising life in what was then one of the pioneer States of the West, and is now one of the great States of the East, his gradual rise to be the recognized head of the Bar of that great State, his service in that greatest of all tribunals that have ever held a place among men—the Geneva Arbitration—all these naturally fitted him, as it seems to me, for the service to which he was called. If his name had not before that fortunate day when General Grant, performing one of the happiest services that he was ever able to render to his country, called him to the seat which he honored,—if before that day his name had not been universally known to his countrymen,—it was, if I rightly read his history, because he had devoted himself almost exclusively to the honorable and high-toned

pursuit of the profession which he had chosen for his life. And now, after he took his place at Washington,—after he found himself chief among equals, surrounded by a great body of experienced judges, unfamiliar himself with the peculiar questions which it is the province of that great Court in its highest functions to administer,—who does not know that the whole of his life and services for those fourteen years was one steady growth and development of the powers with which he had been endowed?

I will not, sir, refer to the great cases in which he took part. Let me call your attention to one or two of the personal traits which it seems to me contributed so largely to make him a great and useful and good judge, and in the first place I would name that sturdy common-sense which lies at the foundation of all justice and all law. Law, they say, is the perfection of human reason. It might as well be said that it is the expression and the perfection of common-sense. I think it marks all those great jurists who have commanded a place in the first rank, all their intellectual powers were based upon that—a sturdy, manly, honest common-sense. And then, sir, his untiring industry. Nobody knows better than you, Mr. Chairman, how much that god-like gift is involved in the service of one who desires fully to discharge the duties of a judge, and especially in that office and that Court whose power and capacity to discharge the duties thrown upon it, the country has long since far outgrown. Why, from the beginning to the end of his judicial life, it was nothing but one sacrifice of comfort, of pleasure, of ease, to the service of his country and the duties of his office. The immediate occasion of his death is known to have been the immense labor involved in one of the most formidable cases that have ever been transmitted to his Court from this district, and you know, Mr. Chairman, of the immense detail of labor that it necessarily involved.

When you look at the history of the Supreme Court, and compare what it is to-day with what it was in the early days when Marshall and Taney won their imperishable renown, it seems impossible that nine men can begin to discharge the duties that are thrown upon them. We read, sir, by the reports, that in the first eleven years of the history of that Court, only one hundred cases in all passed in judgment—less than ten in one year. Now, from every State and Territory in the land, from every Circuit Court and from the Courts of every State, the calendar is not only crowded—

it is overwhelmed with cases great and small, many of them sufficient to occupy the attention of the judge to whom they are assigned for the whole term of the session of the court. I say, then, Mr. Chairman, that his unsurpassed industry was one of his great judicial functions that contributed to his fame.

And then, sir, he had an unerring love of truth and justice that I believe he got by nature from his father's loins and his mother's milk. His father was renowned for that among the great judges of Connecticut. His whole life and every step in it indicated that it was one of the marked features of his character.

Now, if you will give us a judge with common-sense and unfailing industry and an unerring love of justice, you are sure to give us a good and useful and great judge.

Another marked element of his character which we have all been so happy to observe was his modest and simple nature. Never, from the day of his summons to Washington, in any presence, did he assume the airs of greatness or of a great place. Mixing freely with his brethren of the Bar, mixing freely with men and women in ordinary social intercourse, he passed as one of themselves, a jovial, genial, warm-hearted, honest man, full always of that divine quality of good-will to all men.

And then, sir, from a considerable opportunity of appearing before him in the Court which he so graced and honored, I can testify to one peerless virtue which he had, and that is he was always a good listener. That, sir, is an old-fashioned judicial trait, not absolutely universal in modern times. He was never seen to tie up the briefs and the record until the last word had been said by both sides. When Sir Matthew Hale took the seals of office as Chief-Justice in England he wrote out for himself a set of resolutions to guide his judicial life, and foremost among them was never to begin to decide a case until he had heard the last word from the weaker side. Now there was no greater delight to a lawyer, ambitious honorably to discharge his functions and well equipped for his case, than to argue it before the late Chief-Justice and his associates. From the beginning to the end of the argument we were sure of the Chief-Justice's undivided attention, and the poorer our case and the feebler the ability with which we were there to present it, it only insured us his more watchful attention and his more careful consideration.

And then, too, he was no respecter of persons. He had no favor-

ites among counsel, and I never could see that the most renowned advocate in the land commanded any better hearing or more respectful attention than the obscure attorney from a distant part of the country whose name, even, he had to study the brief to discover.

Now, Mr. Chairman, these were great judicial qualities—all of them—and they do in my opinion entitle him to a place which has sometimes been denied him among the great jurists of the race.

One word more, sir, as to the duties that fell upon him in the administration of his great office. In the administration of the enormous and almost uncontrollable business of the Court it falls to the lot of the Chief-Justice to hold in his own hands the reins of the practice and the jurisdiction of the court, and to give his personal attention to the cases that involve those important questions; and none of his predecessors, I think, equalled him in the fidelity and consistency with which they discharged that peculiar branch of their great office. In short, sir, not to occupy more of the time of this meeting, he seems to me to have been a model judge and a model lawyer.

I am sorry to hear from authentic sources that he has shared the lot of almost all great judges and great lawyers, as defined by Mr. Webster: he has worked hard all his days, he has lived well and honorably among men, and he has died poor. Why, sir, it is a reproach to our civilization, to our government, and to our people that the Federal judges are not honorably and adequately sustained, and that one after another they disappear and this tale is told of them. I trust, sir, that if there is one thing in which we shall all unite heartily and earnestly, it will be to support those spasmodic and irregular efforts which have been made for the last twenty years, from time to time, in Congress, to put this matter on the right basis, and to see to it that a man occupying such an office as Chief-Justice Waite held—the greatest in responsibility, the greatest in power, the greatest in honor—shall not be left so inadequately sustained in the matter of public compensation.

And taking my seat, sir, I can only say that so far as I knew our late Chief-Justice he was in all respects a model for us all. I sometimes think that our profession has lost caste, perhaps by the growth of other institutions in the land that have overshadowed it, perhaps also sometimes by the delinquency of its own members; but, sir, if we could all strive to be like him, I believe that our profession would yet recover its lost prestige.

Hon. GEORGE HOADLY said :

MR. PRESIDENT :

I have been requested to take part in this service, as representing, I suppose, not only long and familiar knowledge of and close friendship with Chief-Justice Waite, but also to speak the sorrow of that noble body of men from whom he was promoted to the high office in which he died, and from whom but yesterday I severed my own life-long connection — the Bar of the State of Ohio. I thus come, sir, to add to the tribute to be laid by the Bar of the State of New York upon the grave just closed of one of the best men I ever knew.

I shall not speak of his public career; that is known to you all. Moreover I was not in sympathy with his political views or the legal philosophy into which they to so large a degree enter. I was neither his disciple nor his political associate, but I was for more than thirty years his friend, and what I say must therefore be largely reminiscent in its character, and this, to a degree which I dislike but cannot avoid, compels me to obtrude my own personality upon you.

I had known Mr. Morrison R. Waite, as one busy lawyer knows another who lives two hundred miles distant, for many years, when we met as members of a constitutional convention elected to frame a new Constitution for Ohio, in May, 1873. His friends selected him as their candidate for the presidency of that body. I was not in sympathy with their wishes, but espoused the candidacy of one of my colleagues from my own county. Mr. Waite was chosen, and I took it for granted that, naturally, the body being measurably political in character, I should be assigned a position at the tail of some insignificant committee. A day or two later he sent a common friend to me, offering to my choice a place upon the Committee on the Judiciary, considered the most important committee in the body, or — what I coveted more than any other place — the chairmanship of the Committee on Municipal Corporations, and thus I learned that Morrison R. Waite, in political life, was a magnanimous leader.

When he was appointed Chief-Justice of the Supreme Court of the United States I happened to be in attendance, on a brief leave of absence from the Convention, upon the Supreme Court. Attorney-General Williams had not been confirmed. Mr. Cushing had

failed to receive the approval of the Senate. The succession was in doubt. On the Friday evening preceding the final appointment (made on Monday) my wife was at the White House, and in her presence a gentleman reminded General Grant that he had failed to appoint a Chief-Justice that day. The President said: "Yes; my mind is made up. I have been ready to appoint, but I will not subject any friend to the three days' newspaper criticism which must follow, for the appointment cannot be acted on until Monday. No man in America can stand such an ordeal. I shall appoint on Monday. Remember that Sunday is one of the three days, and the Sunday papers are worst of all." Witty as this answer was, wittily evasive of what was perhaps not a proper question, nevertheless the man he did appoint when Monday came, and who was unanimously confirmed by the Senate, had lived a life which relieved the suggestion of all truth. The sunburst which might have lighted up the recesses of his life would no more certainly have convinced the American people, however much more quickly, of the merit of him whose fruit had ripened in the shadow, than has the public career during the fourteen years which have followed.

Returning to Cincinnati I went to his seat in the Chair of the Convention, and, after a few congratulatory words, said to him with much emotion, for our fathers had been friends: "Mr. Waite, do you not specially sorrow to-day that your father is not living?" His eyes filled with tears. "Yes," he answered. "My father was a judge and a chief-justice, and this promotion, so unexpected, so unsolicited, would have filled his cup to overflowing." Mr. Chairman, he presided for four months over a body of more than one hundred men, most of whom were lawyers, who, I need not say, therefore, occasionally contributed inharmonious elements, and needed wise guidance to avert disaster. But during those four months, although he had never held public office before, except as member for a single term of the most turbulent and yet most glorious General Assembly Ohio ever had,—the legislature which made Ohio truly a free State, and began that political life which ended and culminated in the appointment of his immediate predecessor to the position of Chief-Justice of the Supreme Court of the United States,—although he had for twenty-five years been in private life, and was utterly unfamiliar with that complex system of obstruction denominated Parliamentary Law, he nevertheless made no mistakes. His temper was sunny, his spirit was gentle, his common-

sense, as has been well said, was large and broad, and he had no antagonisms with any man. No appeal was ever taken from any decision he made, and he left the Convention for the position of Chief-Justice with not merely the respect, but the affection of every one of the gentlemen with whom he had been thus brought in contact.

Years later it came to my lot to know him very differently. One who had been his college friend, and was then endeared to him by many ties, fell into trouble and sought his aid. From the day when this appeal was first presented, until, after long years of very great suffering, his friend and classmate passed from earth, the solicitous devotion of Morrison R. Waite to that friend could not be over-described; and thus I learned to know him as a loving friend.

Two years ago we went to Alaska together. We were more than a month very closely associated, spending thus together our entire time. We occupied the same stateroom for three weeks. I saw him daily— hourly. The little discomforts of the trip he bore easily, pleasantly — laughed them off, but my attention was attracted to him in another way, and I speak of it now because it was new to me, and I had not known him thus before, well as I thought I had known him. Wherever he went, if I may use the phrase, he scoured the country intellectually, in search of knowledge; and when he returned, whatever there was of Alaskan interests, of Alaskan history — whether Russian, or Indian, or American; whether relating to seal fisheries or salmon fisheries ; to mining or other interests ; educational and missionary — whatever there was to learn he had learned ; and he left nothing un gleaned in any field over which he passed. He was a thorough gleaner, and thus I learned to know him as a man of comprehensive and extremely close observation.

Mr. Chairman, I hope I shall be forgiven for having spoken of my friend in these personal relations, so much being connected with myself which I should have been glad, if I could, to avoid.

Publicly, as well as personally, it may be said of him, with a slight paraphrase, as was sung by Tennyson of Wellington :

“ Not once or twice in our fair island story,
The path of duty was the way to glory.”

Change the word “ glory ” to “ honor,” you withdraw the rhyme, but you leave the perfect application of the expression to this great

and good friend, this upright and wise magistrate, around whose grave the Bar of America are now united, as they never were more united before, in mourning.

Hon. JOHN F. DILLON said:

MR. PRESIDENT AND GENTLEMEN:

Since I came here this morning I have been requested by the Committee having these exercises in charge to say a few words on the afflictive occasion that brings us together. It is a privilege, although a sad one, which I have no inclination to refuse. My regret is that it is not more within my power to say something worthy of him whose death we deplore, and worthy of this presence here assembled to express their veneration for his character and their respect for his name and memory. The thought that lies uppermost in my mind is that I feel the death of the Chief-Justice to be almost a personal bereavement. I cannot say that I knew him intimately, or that I was ranked among his close personal friends, and yet I knew him well enough to have formed for him a sincere and real affection. His death was so unexpected that it is difficult for me to realize that I have looked on his kindly face for the last time, and that for earth and the duties of this life he is indeed no more — no more!

Only in January last, when I had occasion to be at Washington, on going to the Court one morning it chanced that the Chief-Justice preceded me up the marble steps of the Capitol. I observed his firm and elastic step and the ease and rapidity with which he made the ascent. Exchanging the usual greetings, I inquired about his health. He replied — and his looks confirmed it: "I never felt better in my life." He was full of life and hope and vigor. He appeared to be in the enjoyment of that mild and serene happiness that fitly accompanies what Gibbon describes as the "autumnal felicity of life." Everything gave promise — alas! so soon to prove illusory — of many years of useful and honorable service. On the Monday preceding his death I received a note from him, dated the Saturday before, written with as firm a hand as ever, and evincing a warm interest in some of the little affairs of life. This letter I prize as one of the last, if not the last, he ever wrote, and it seems to me to be yet warm from his hand and heart. When, on the next Friday morning I believe it was, the overwhelm-

ing news of his death came, the reflection impressed itself upon me, "What shadows we are!" But I will not add, "And what shadows we pursue!" because a man whose life illustrated, as his did perpetually and perennially, the higher, all of the higher, elements of a noble manhood — a man who discharged, as he did, to the acceptance of the Bar and the people of this country the duties of his exalted office — the highest that any mortal man can hold — and who left to his countrymen and to the Bar the priceless legacy of a pure life and noble example — Mr. Chairman, *he pursued no shadows!* We honor ourselves, we honor our profession, we honor the sacred name and cause of justice, when we thus assemble to honor his memory.

It is said, Mr. Chairman, that in the providence of God nothing comes too early or too late. It must be so; and yet the Bar of this country of which he was the honored head, all who have practised, and especially all the young men of the Bar who have ever appeared in the Court over which he presided, deplore his death with no common sorrow, and will find it difficult to resist the feeling that it came too early — came all too early.

Mr. Chairman, if I may speak it unblamed, I loved him; and it is not, as it seems to me, the least among his qualities — perhaps it is among the greatest — that his qualities of heart and of mind, his modesty and his worth, were such that in the administration of his great office he had endeared himself to the Bar and enthroned himself in the confidence and affections of the whole American people, irrespective of sections and of parties. It is not too much to say that a whole nation sorrows at his bier.

I shall not speak long, nor shall I touch, and by touching mar, the carefully drawn and beautiful picture which has been presented here to-day (by Mr. Choate and others) of his qualities and character and of his just claims to our respect and veneration. Perhaps I ought here to stop, but I am tempted to say something more. I have seen it stated, or suggested, that while the late Chief Justice was a good, it could hardly be claimed that he was a great, judge. That is an inquisition not here and now relevant. I only pause to inquire, What is meant by greatness in a judge? It is given to but few men to go into high judicial station at a period in the history of the law of any country where great changes can be suddenly, or even wisely, made. This was perhaps true in the time of Mansfield. It fell to Marshall's lot to lay down the lines on which the devel-

opment of the Federal Constitution has been mainly worked out. Hale and Holt were great judges, and yet they made no marked structural changes in the law of their day. The judicial character is largely grafted on the personal character, and the true judge, the ideal judge, and in this sense a great judge, is a man who, as Mr. Choate has well said, has instinctively the sense of justice, the love of right, adequate professional learning, patience, willingness to listen and to learn, the courage of his opinions and convictions, and a conscientious devotion to his duties. All these qualities Chief-Justice Waite possessed. He had especially Hale's faculty of knowing where "the question and knot of the business lay," and of going directly through the most complicated case to the heart and marrow of it. In addition to this he had rare and admirable administrative and executive ability. As illustrative of the patient care and labor which he habitually brought to the discharge of the duties of his office, it occurs to me as I speak to mention an incident which shows, at my expense, some of the judicial qualities of the late Chief-Judge. I chanced to be engaged two or three years ago in an important case wherein one of the States of the Union had directed a *quo warranto* suit to be brought against one of the Pacific Railroads — originally chartered as a State Corporation, and which, under State and Federal Legislation, had become merged into the Pacific family of railways. I undertook, in person, the preparation of all the pleadings in the cause, including the petition for its removal from the Supreme Court of the State to the Circuit Court of the United States. Adequately to enable me to perform my professional duty as best I might, I read all the debates in Congress relating to the Pacific roads, made a careful study of their history, and of all the State and Federal Legislation concerning them. I argued the cause at the bar of the Supreme Court, and gave to the cause first and last two or three months of close attention. I had, in fact, been prodigal of labor upon it. I thought I understood it in all its details. Finally the opinion came down, prepared by the Chief-Judge. When his opinion was printed he sent me a copy. On looking over the statement of facts, which was necessarily elaborate and complex, I discovered what I thought to be an error in the name of one of the companies which the litigation had brought to the notice of the Court. I addressed the Chief-Judge a note stating that I thought perhaps he would discover at such and such a place an error, and hoped he would pardon the liberty I took in

calling his attention to it. In the course of two or three days I received a note in reply, stating in substance : "I am much obliged to you. I have looked over the opinion again, and my judgment is that you are mistaken, and not I." I examined the record again with care, and the result was that I was obliged to write to the Chief-Justice confessing my error and stating that he was right and I was wrong. All this is of no worth, except as illustrating that care and accuracy which are entitled to high rank in any assemblage and appraisement of the judicial qualities.

It is quite enough to say at this time, that he was fully equal to all the duties of his place; that the priceless jewel of the chief-justiceship suffered no diminution of its luster in his hands and under his administration. This is high praise, but it is just praise; and higher and juster praise no man need have. We are now sorrowing at his death. We are here to-day rather as mourners than critics. We are still in the sweet fragrance of his life and recent death, and this is not the occasion for either a comparative or critical estimate of the judicial qualities or character of the late Chief-Justice, or of the great judgments of the Court on public and private questions which were rendered under his presidency. Such an inquiry belongs to another place, perhaps to a distant day.

I recall the beautiful close of Barry Cornwall's memoir of his friend, where he said : "I have not attempted to fix the precise spot in which Charles Lamb is to shine hereafter in the firmament of letters. I am not of sufficient magnitude to determine his astral elevation. That must be left to time. Even the fixed stars at first waver and coruscate, and require long seasons for their consummation and final settlement." So, here, let us content ourselves with placing on record our unqualified respect for the pure and spotless character, sterling virtues, and the admirable judicial qualities of him whose decease we truly lament, leaving to a remoter day and a more fitting occasion any attempt to fix and determine his exact and permanent place in our jurisprudence.

Mr. WILLIAM ALLEN BUTLER said:

MR. PRESIDENT :

I think it may truly be said that never, since its organization, now nearly one hundred years ago, has the Supreme Court of the United States been so near the thought, the sympathy, and the heart of the

American people as during the ten days just past. To the general view courts of justice, of whatever jurisdiction, lower or higher, State or Federal, are only parts of the machinery of the Government, and their doings and decisions enter very little into the current life of the people. Outside of our profession few men read, and still fewer understand, the opinions of judges or the judgments which they direct. But death at the foremost post of duty in this high tribunal, sudden death in the midst of all that makes human life most honorable and honored, most efficient and most beneficent, is something that all men can comprehend, and which calls out the sympathies of all. "One touch of nature makes the whole world kin," and the tide of feeling which a great public bereavement sets in motion rises everywhere to the level of a common, household grief.

Our meeting of to-day emphasizes the respect entertained by the Bar of this Circuit for Chief-Judge Waite. Before his appointment some, perhaps many, of us had professional relations with him, and knew him as a leading commercial lawyer in Ohio. This was the case with my own firm, and we were well aware of the skill and ability which he possessed. He came to the Bench of the Supreme Court from the ranks of the Bar with the equipment for judicial station which his active practice as a lawyer furnished, and entered at once upon the full discharge of the varied responsibilities of his high position, not as a novice, but as upon an accustomed task.

His first opinion as reported in 19 Wallace, delivered in the spring of 1874, shortly after taking his seat as Chief-Judge on the 4th of March next preceding, dealt with one of the oft-recurring questions of conflict between State and Federal legislation which come before the Supreme Court in so many varying forms, and from that time, through all the fourteen years of his term, he took his share in the deliberations and decisions of the Court with a zeal and ability which commanded universal confidence and commendation.

The presiding officer of the Court—its Chief-Judge and head—he was a part of the Court, all the members of which constitute "the one Supreme Court" in which the Constitution vests the highest judicial power. When Mr. Pinkney, at the height of his professional repute, made his famous argument in the case of *McCulloch v. The State of Maryland* (4 Wheaton, 316) he characterized the Supreme Court, in the ornate and florid style then in vogue, as "distinguished for all that can give to judicature a title

to reverence; as a more than Amphictyonic Council." This somewhat obscure classical allusion illustrates the reverence for the Court, as a body, which as a professional tradition, if not as a continuing sentiment, we never disconnect from the great name of Marshall, whom, with Story and his associates, Pinkney addressed. Chief-Justice Marshall stands with us as to constitutional law as Lord Mansfield stands as to the commercial law, and we are, perhaps, too apt to make the great constitutional Chief-Justice a pattern and exemplar of the judicial fitness and fame which should attach to his successors and of the qualifications required for fit succession. But it is the Supreme Court as a whole which is the conservator and interpreter of our constitutional rights, and it is not so much its highest honor to have been or to be presided over, or to include, men of unmatched abilities, if indeed that could be claimed, but that as a Court it has steadily been true to the trust and equal to the trust with which the people have invested it; that it has kept pace with the growing needs of the country, and has itself grown in wisdom with the nation's growth in wealth and power.

Mr. O'Conor, in a reported argument in the Court of Appeals, happily illustrated this fact when he said "that Admiralty jurisdiction could exist without tide-water or salt water was an idea too novel for even the great mind of Chief-Justice Marshall, but at last judicial wisdom, sharpened and impelled by strong necessity, cast aside these immaterial incidents and, looking at the substance of the thing, found in the Constitution a government for our great rivers and inland seas."

It was reserved for the Court in which Chief-Justice Taney presided to announce the final establishment of this enlarged grant of power which Marshall and Story had denied, and for the Court in which Chief-Justice Waite has just ceased to preside to give to it even wider scope in aid of the commercial interests of the nation.

In the advance of the Court on this, and other lines of decision, Chief-Justice Waite was in sympathy with an enlightened progress and a wise exercise and maintenance of the judicial power. He was no doctrinaire or extremist. He was courageous, but not too bold. He was neither scared, on the one side, by usurping and overreaching statutes or acts of Congress; nor, on the other side, by the cry of "judge-made law," so often raised as an obstacle in the way of a needed exercise of the judicial power. His record is in the thirty-nine volumes of reports which include his term as Chief-Justice — in

his very many opinions, which will remain as monuments of his ability, industry, and unswerving fidelity to duty. To him we may fitly apply the words of the then senior Associate-Judge of the Court in its tribute to Chief-Judge Chase: "He died with the armor of duty on, wearing the honors of a great and conscientious magistrate."

We can hardly attribute the death of Chief-Judge Waite to the excessive labors which his high office exacted, because, since he reached the age of seventy years, these have been voluntarily continued. Nevertheless, while he felt a constraint to retain his place as Chief-Judge, and a natural pride in the performance, without stint or diminished regularity, of all the labor it involved, the labor was too great and the burden too heavy to be borne. Faithful to the last, the end came as rest comes to a weary laborer at the close of a long, hard day's work. There seemed to me something very touching and pathetic, and also most consoling, in the brief notice, on the day of his death, of the manner of his dying. In the early morning, after a restless night, he is reported to have said to his sole attendant, "I feel better, and will go to sleep"—then turned his head on the pillow and slept. This was the serene, quiet, silent ending of a life which had been filled with so much activity and crowned with so much honor, and which, so long as it lasted, stood as the embodiment of the highest of all the functions on whose fit discharge the fabric of society rests—this life went out at a touch as light as that of

"Summer's evening's latest sigh
Which shuts the rose."

To such a death we may well apply the wealth of imagery of the English poetess in lines whose beauty is not marred by their familiar use :

"So fades a summer cloud away ;
So sinks the gale when storms are o'er ;
So gently shuts the eye of day ;
So dies a wave along the shore."

And over this sleeping form, borne to its rest with all the honors a nation pays to those who have served it best, what better inscription can we write than that so often found in the Roman Catacombs on the tombs of the early Christian martyrs—"IN PACE DOMINI DORMIT."

Mr. FREDERIC R. COUDERT said :

MR. PRESIDENT :

Justice is the great concern of mankind, said Edmund Burke. A recognition of this truth brings us here together to-day to testify our reverence for our deceased and honored brother, for he represented in his person and in his office, more than any other man of our nation, that justice which, working the salvation of our people by regular and decorous methods of adjustment, is intolerant of "violence, oppression, and sword-law."

What greater homage to the majesty of justice and the supremacy of law does the history of any nation present than the spectacle of which this reunion is but a fractional part—a great nation of sixty millions following to his grave this plain citizen whose only title to distinction was, and is, that he faithfully performed the duties of his station. But that station is so exalted, so noble, that office signifies so much, that when, of its incumbent, it may be truly said that he has worthily fulfilled his trust, all the honors paid are well earned, and the epitaph may be written in a line.

It was the privilege of our honored brother to form part of and preside over a Court which is unique in the history of civilized nations. Those who fondly look for something of divine inspiration in the written Constitution that first molded, directed and welded together the members of this young and struggling republic, must find material for encouraging speculation in the few lines that created this tribunal. To its hands have been committed interests that never had been, and nowhere this day are, entrusted to the decision of plainly clad and unarmed men. Not only does this body possess the rare power to sit in judgment on legislators, the direct creation and mouthpiece of powerful communities; not only may these few Judges by their fiat annul the most carefully contrived plans of law-makers and paralyze their action, but they may summon before their bar sovereign States—the municipal representatives of organized millions—to hear the exposition of their duties, to be warned as to the limits of their power, to be instructed as to their right and proper functions, to learn the part that they must perform in the family of States to which they belong. States rich, prosperous, and jealous of their sovereignty, must bow in submission to a civilian's voice, and yield their preference, their pride, their jealousies, to the only power that they dare

not defy. What a lesson, what a keen vision of the future and its growing needs, what a giant stride in the path of peace and law, the creation of this body teaches, exhibits and illustrates. The struggling and tottering States of a century since have grown into three times their number, and into such wealth and power that comparisons and statistics can scarcely keep pace with the reality. The sixty millions of yesterday promise to be one hundred before this dying century has ripened into another; schemes of aggrandizement, of policy, of finance, of expansion, of admission, of exclusion, rise, grow, clash, succeed, or fail, but all these millions feel and know that whatever peril may threaten our nation, whatever ills may fly from the scarcely opened box that contains the secrets of our future destinies, no fatal harm can befall us so long as that small body of men, sitting in that quiet court-room in the Capitol, retains its power and commands respect. The sovereign State that appears as a suitor before that Court knows that it has abdicated the one power that men most sedulously guard — the power to redress fancied wrongs by prompt violence. The surrender of this right, more than aught else in our scheme of government, marks our Constitution as the wisest device that ever sprang from human minds. A fatal hour did come when the compact was broken and the voice of the law was drowned in the clamor of battle; but the day has gone by when mad rebellion against the law finds a friend or an advocate, and those who love their country may, like the Roman poet, as he touched upon a like passage in the history of his people, turn away and cry out that it grieves and shames us to think of scars and crime, and of brothers — and of altars overturned and dishonored.

Of such a court the departed Judge was the honored chief. The Chief Magistrate of the nation, the statesmen and law-makers, the judges and the Bar, all joined to honor him and to mourn his departure from his accustomed places. The highest qualities of the true judge were his: the native integrity which had grown into the very life; the anxious desire to do right; the kindly heart that was ever ready to mitigate, never to aggravate, the harshness of the law; the unaffected exhibition of a genuine manhood, great enough to rely upon itself, too great to seek for tributes of admiration or homage not fairly earned. Just, true, gentle, kindly, clear in thought and clear in speech, faithful in his intentions and useful in his life, he has earned the honor that we now pay him. He has

deserved—and this crowns the glory of his life—to be named as one of an illustrious line of public servants. He may, as they have done, safely trust his memory to his people.

Mr. CHARLES C. BEAMAN said :

MR. PRESIDENT :

I cannot forbear to add one more word. Most of the words already spoken have been personal, and mine, too, must be personal, Mr. Waite I knew well, and from me, as one of the younger men. you must hear again of friendship and sorrow.

It happened that before the Geneva tribunal I was the solicitor for the United States, Mr. Cushing, Mr. Evarts, and Mr. Waite, as you know, being the counsel. To Mr. Waite I was until then a complete stranger, but I was there thrown into intimate relations with him, and for nine months in Paris and Geneva trying to help him was a great part of my work; and let no man who speaks of Chief-Justice Waite ever in any way forget what he did at Geneva. His work there was mainly dealing with the facts of the controversy. The proceeding before that tribunal was a lawsuit; there was a Court; there were parties; there were counsel; there were facts; there was law. The Case, so-called, of the United States had been prepared and stated at length by Mr. Bancroft Davis, who, as agent, represented the United States, the plaintiff. After the Case, containing both a statement of facts and arguments, had been so prepared and presented, the defendant, Great Britain, through its agent, presented what was known as the English case. It then became the duty of counsel on each side to prepare arguments, and in the printed arguments submitted and signed by the counsel of the United States you will find Mr. Waite's work; you will find Mr. Cushing's work; you will find Mr. Evarts's work. They each had taken a separate part, but each consulting with the other and each comparing and examining the other's work; and if you will to-day examine that argument as it now stands in print, some five hundred pages in all, you will find about two hundred of these pages treat of the facts—and this part of the work was Mr. Waite's.

It had been laid down in the treaty as a rule of international law, for the purposes of the tribunal, that a neutral nation was bound to use due diligence to prevent the escape from its ports of belligerent

cruisers. The interpretation of these words "due diligence" as applied to the facts was the work of counsel. The facts that were presented to that Court and to that jury were the detailed circumstances under which each one of the several cruisers had left or had been recruited from English ports; and you will find by examining that argument, that while many others had before stated those facts, and while Mr. Bancroft Davis had, after the greatest research and with the greatest care and ability, stated them in the Case, yet that Mr. Waite treated them in the argument in a manner that made them seem new and fresh and perhaps more powerful in order of arrangement.

The circumstances attending the fitting out of the several cruisers were not proven to a great extent by what in courts of law would be considered legal testimony—the proofs existing mainly in the letters from Mr. Adams to Mr. Seward and in Mr. Adams's letters to Lord John Russell, and in Lord John Russell's replies to Mr. Adams, and in Consul Dudley's letters to Mr. Adams. With a mass of such correspondence before him Mr. Waite did his work. Read to-day that argument of the United States, and you will find the story of the wrongs done to the United States as told by him, and if ever you should want to know what ability Chief-Justice Waite had to state facts study that argument. He had made it his day work; he had made it his night work; and it helped greatly in securing the favorable award of the arbitrators.

On returning from Geneva Mr. Waite went to preside over the Constitutional Convention of the State of Ohio, to which Governor Hoadly has alluded.

The Governor says that he and the Chief-Justice had different political opinions. They perhaps had before Mr. Waite became Chief-Justice, but no man, it seems to me, can with accuracy say that after Mr. Waite became Chief-Justice, he and the Chief-Justice had substantially different political opinions. Read the record of his decisions. Read them North, read them South, read them Republicans, read them Democrats, and try to discover what political opinions Chief-Justice Waite has had. As I read the newspapers to-day and see them crowded with expressions of reverence and grief at the death of this Chief-Justice, I find tributes coming not alone from partisans, not alone from Republicans, not from the North alone, but from men South and from men North,

and from adherents of all parties, who unite in saying: "The Supreme Court of the United States has had as its Chief-Justice a man who, becoming Chief-Justice, dropped party, and in his opinions has said for himself and the Associate Justices, 'We are not partisans but judges, and certain laws enacted by the party to which we did belong were unconstitutional.'"

I do not believe that you could by reading the opinions of Chief-Justice Waite determine to what party he belonged before he became Chief-Justice.

But my tribute is personal. As I followed the Chief-Justice's remains to the Capitol the other day, I was in the same carriage with his old pastor, the Reverend Dr. Walbridge, who told me he had known Mr. Waite for forty years, and he added: "I have been trying to think since he died, what there was about him that made me love and esteem him, and I have come to the conclusion that it was his transparency." Now I do not know exactly what Dr. Walbridge meant by transparency, but he probably meant that he could see into and through him. Any man who saw Chief-Justice Waite in court, or who was his friend, must have felt that he could say: "I know what that man's character is; I know what that man thinks of right and wrong, and I know his true noble-mindedness and the absolute integrity of his character." You saw him at his home—did the Chief-Justice appear to you there? No; he was Mr. Waite there. You saw him at the Supreme Court—did the Chief-Justice appear to you there? Yes; he then appeared to you as presiding over a court, competent to decide what justice was, and to decree that justice should be done.

His sweet simplicity at home, and his dignity on the Bench, were not external, but internal. As Dr. Walbridge said, he was transparent. At his home you saw him in part and on the Bench you saw him in part, but wherever you saw him you saw a kindly, just man. He is the Chief-Justice who I believe will stand before his country hereafter as the man of whom, when he died, all his fellow-citizens said: "He was a man we loved, and his interpretation of our laws was just."

I dined at his house a few weeks before his death, and upon his table were oranges which the Chinese Minister had sent him—each marked with the Mandarin's or some other stamp, to indicate that they came from the Imperial Garden. In the House of Representatives the other day, at his funeral, there, too, was the Chinese

Minister. And why was he there? He had not perhaps the same idea that we have as to a hereafter—as to a life to come; but that Chinese Minister had seen into Chief-Justice Waite. Dr. Walbridge and he had each found the Chief-Justice transparent; and the Chinese Minister had, in some way or other, seen and learned that there was a bond between him and Mr. Waite, and he had, therefore, loaded his bier with flowers, as he had before loaded his table with fruits. That was his tribute to Chief-Justice Waite as he understood him—and this is our tribute to the same good man.

I called him my friend. The bonds that tied us were in part tied by him, and he never untied them—but they are broken; and while memory lasts, the recollection of their tying will be joy, and of their breaking will be sorrow.

Hon. CHARLES PEABODY said :

MR. PRESIDENT:

It seems to me that after the remarks which have been made here to-day, coupled with those heretofore made by the public press, not at first sight apparently quite in harmony with these made here, but easily harmonized, we must all come to the conclusion that Chief-Justice Waite was quite well entitled to the reputation which my friend Mr. Choate has said that the press was slow to accord to him. If he had excelled in any one thing above others it would have been easy to note the fact and say he is distinguished in that or in that. If he had excelled in any one, two, or three moral or mental qualities, it would have been easy to say, "Mark this excellence," and to distinguish him from other men in that regard. But, sir, the testimony fairly read, presented to us since the time of his death—even including that testimony which commenced without the laudation which those of us who knew him well had expected—will bring us to the conclusion that Chief-Justice Waite, so far from being an ordinary man, so far from being a man on the general level of able and eminent men, was really and intrinsically a great man. But, Mr. Chairman, we have much better testimony than that of the public press derived from unprofessional observers. Take the whole character of Chief-Justice Waite as delineated to us to-day by contemporaneous professional brethren, gentlemen having the fullest knowledge from personal acquaintance and the amplest capacity for weighing and judging, and where is the point

in that character that descends towards a mediocrity? Where is the point in that character which is not eminent and greatly above what we call mediocrity even among men in eminent places, like the one occupied by him. The combination of eminent qualities, moral and intellectual, made in him a character so symmetrical, so complete in all its parts, that we hesitate to pronounce upon one or more qualities as of paramount excellence.

Chief Justice Waite entered office, as it is justly said, without a great amount of previously acquired reputation. He had not that shield against criticism at the beginning of his career or that aid to the acquisition of fame in the course of it. Something is due to that, no doubt, in estimating his public career. He had, therefore, the more to acquire afterwards. He did acquire it, and he acquired not only reputation for the usual high qualities of a Chief-Judge; — his intellect was equal to everything that it was required to be exercised upon. His learning and his industry were equal to every emergency, to every demand; but he had also the excellent moral qualities which already distinguished him, and which, in their own nature, tend a little towards diminishing the conspicuousness of intellectual qualities. His moral qualities were of a character so excellent, so admirable, so elevated and lovely, that we are liable to fix and dwell on them and to underrate comparatively the intellectual qualities. And that, Mr. Chairman, is the error that the press has fallen into. His excellent, complete, and elevated moral qualities were such that the intellectual quality was less conspicuous than if it had stood beside qualities of less eminence in the moral world. I had the pleasure of sitting with him an hour or two, within a very few weeks, at his own fireside with his family. Nothing could be more lovely than the relations between him and his family. I was very much impressed then, as I had been before,—for I had known him throughout his judicial career and previously, somewhat,—with the symmetry of his character. It was complete all around; the moral and intellectual qualities were all complete.

I have in my mind now a lawyer of this city who had a gift of transcendent eloquence. The world said of him: "Oh, yes; he is a man of enrapturing eloquence." They did not look further to see whether he had legal acumen and learning and intellectual power. Yet he was a man of the highest order of intellectual powers; his ability was equal to everything that he was called upon to exercise it about in a professional business of the first importance, yet that was seldom

observed or commented upon. He had not half the reputation for intellectual ability he would have had if he had not possessed that fascinating and all-absorbing talent of eloquence; and just so with this quality of Chief-Justice Waite. His moral qualities and personal manners were so captivating, so fascinating, that the high order of his intellect was less dwelt upon, less fully appreciated. There was something better, something which pleased everybody who came in contact with him more than the admiration of his intellectual qualities. But his ability, sir, was ample. Who, in his term of fifteen years of service in the Chief-Justiceship of the highest tribunal on earth—who has ever found a failure, an omission—a failure to comprehend the most intricate case, to appreciate and apply properly the law, or to come to an intelligent conclusion? Who has ever found an opinion of his based upon or affected by bias or prejudice or anything except the highest intellectual and moral considerations? Not a man. Such a criticism has never been made, it is believed, from any source, and certainly not from a source worthy of a moment's consideration. Is it not high commendation of a judge that, sitting as he has done, the representative of his Court in the public eye, nobody has found a single cause of censure? There is a habit of overlooking that perfect equality, completeness, and symmetry of character, and not attributing to it what we would attribute to the various qualities if they stood comparatively alone.

Chief-Justice Waite was great, sir. He was a great man. His history shows it. The life he has had upon the Bench shows it. Those who knew him before his appointment had a very lively appreciation of the same thing. I happened to have known him at the time of the Geneva Arbitration, of which my friend has just spoken. Nobody who had the capacity for judging character ever failed to see that Mr. Waite, as well as Chief-Justice Waite, had intellectual and moral qualities of a very high and excellent character.

His death, sir, is the bereavement of a family, plunged into terrible distress, overcome with a grief which will weigh to the last moment upon them, especially upon the older member of it, the beloved wife; and, sir, it is measured in his case as it is measured very seldom with human beings. Very few men leave this earth with as much of the affection of those about them and as sincerely loved and esteemed by those near to them as Chief-Justice Waite.

I wish, sir, that his epitaph could be written in brighter words. I only regret my own inability to add to what has been so well said by those who have preceded me.

Mr. JAMES PARKER said :

MR. PRESIDENT :

Only one Ohio man has thus far spoken. Chief-Judge Waite was appointed from that State. He succeeded another Chief-Judge from Ohio, whose name is most eminent not only in the domain of law but in that of politics. I had not the pleasure of knowing the late Chief-Judge, but he was an early friend of my father's, who was also a judge in that State, as my friend Governor Hoadly knows.

There is one thought connected with his demise, and with all that has been said here to-day, which I think it well to put before the minds of this meeting. It has been the habit of our Eastern Bar to look with some little lack of consideration upon the decisions that come from the courts of the West; but we may all, when we come to look at the composition of the Supreme Court, whose greatness and ability have been so highly, but not too highly, lauded, take note whence those judges, those eminent lawyers, were appointed.

I do not wish to detain this meeting by further eulogium of Justice Waite. His history is written, and I believe his reputation will grow brighter as the years roll around.

But we may all remember (in the East we may remember with profit, and it will illustrate to us the greatness of our country), that upon the Bench of the Supreme Court, when he sat as Chief-Judge, there sat with him but two Judges from States east of the Alleghany Mountains.

Having in mind the just eminence of the two late Chief-Judges, and of their associates on the Bench, we may well remember here, and lay to our hearts the truth of the saying uttered long ago, that, in wisdom and ability, and in everything that goes to illustrate the high character of the American citizen, "Westward the star of empire takes its way."

Mr. ROBERT D. BENEDICT said:

MR. PRESIDENT :

I had not intended to say a word on this occasion, nor should I, except to supply what seems to me a slight omission. I allude to the fact that not a word has been said of the eminent services rendered by Judge Waite in the Circuit Court of the United States for this District. That Court years ago, by reason of the long sickness and death of the Circuit Judge, had found itself very much clogged in its business. Litigants had been waiting years for an opportunity to have their cases disposed of, when the Chief-Justice, in addition to all the burdens of his Washington duties, took upon himself to come to the assistance of this Court. He came here and devoted himself to the disposal of the Admiralty calendar of this Court on appeal for two successive terms. I suppose there is no doubt that that was a branch of the law to which his attention had not been specially called before. But I think there is no question about it that the unanimous verdict of all those who had occasion to be before him was that the administration of justice suffered nothing by reason of that; for he brought to the disposition of that branch of the business, ability and industry and a disposition of mind which made his administration of that branch of the business here eminently satisfactory. So satisfactory was it to us that at the close of his business here the members of the Bar requested him to sit for his portrait—the one which hangs on the wall of this Court-room. We considered then that his services here rendered him fully worthy to have his portrait stand, as that of an admiralty judge, beside the portrait of Judge Nelson. And I surely may say that all the experience we had of the Chief-Justice in the Supreme Court of the United States in that branch of the law fully justified the opinion which we formed from our experience of him here; and that the Bar of this circuit will always be glad that they have placed here to look down upon them the portrait of Chief-Justice Waite alongside that of Judge Samuel Nelson.

Judge WILLIAM J. WALLACE said :

GENTLEMEN :

The resolutions which now await your approval express the sense of loss we feel, so profoundly and so sincerely, in the death of the Chief-Justice.

The tributes which have been paid to his memory by the distinguished advocates who have addressed you have presented, without any extravagance of eulogy, a just and discriminating estimate of his character and services; and nothing more remains to be said. I may be permitted, however, in behalf of the Judges of the Court in which at times the Chief-Justice presided in this circuit, to say that we shall ever remember his unvarying courtesy, his great patience and industry, and his perfect equipoise of temper and of judgment. He united with these characteristics sound learning and a solid and vigorous understanding. He was happily constituted to discharge with great acceptance the responsibilities of the exalted and exacting station which he was called to fill, and to add dignity and honor to the tribunal over which he presided, and to intrench it more deeply in the confidence of the legal profession.

Recalling his life and character, we shall carry in our hearts as long as memory lasts the portrait of one who endeared himself to all who knew him, and who enshrined himself in the lasting respect of his countrymen by the fidelity and impartiality and eminent wisdom with which he met the arduous and elevated duties that fell to his lot.

The resolutions were then unanimously adopted.

Mr. CLIFFORD A. HAND said:

I move you, sir, that the gentlemen by whom these resolutions were moved and seconded be requested, in behalf of this meeting, to make a suitable presentment of the action of the meeting to the Supreme Court of the United States.

The motion was carried, and the meeting then adjourned.



CHIEF-JUSTICE WAITE died March 23, 1888; the meeting of the Bar was held March 31. Hon. Roscoe Conkling had been invited, and had promised to speak at the meeting, but, by reason of sickness, was prevented from so doing. Mr. Conkling died soon after, April 18, and among his papers his nephew, Mr. Alfred Conkling, found the following address written with lead pencil in Mr. Conkling's own handwriting, and in part copied by him in ink, evidently prepared in the expectation that he could attend the meeting. Before Mr. Waite was nominated as Chief-Justice, President Grant had wished to nominate Mr. Conkling, but Mr. Conkling was not willing to have him do so.

The preparation of this address was undoubtedly Mr. Conkling's last work, and its insertion here seems fit both as a memorial to Chief-Justice Waite and to him.

Mr. CONKLING wrote:

MR. PRESIDENT AND GENTLEMEN :

What official lineage or succession known to the world is more illustrious than the Chief-Justices of the United States? From some of the incumbents of other exalted places, impartial history may withhold the meed of distinguished excellence. But no man has ever led the Supreme Court of the United States whose fame is not unquestionable. Contemporaries and posterity have united in awarding integrity and ability to each one of the line.

Together as a group they are renowned wherever the English tongue is spoken and the common or the civil law has reached.

Omitting two whom ill health prevented from executing the duties of the office, there have been six Chief-Justices. Of these all but one had been partisans, bred in the school of public affairs and of ardent party strife.

Jay was twice Chief-Justice. Still his judicial career was brief; but it was not wholly overshadowed even by his political and diplomatic celebrity.

Oliver Ellsworth sat only three years, and his fame would be assured did it rest only on the Judiciary act of 1789, which has stood even to this day as one of the best examples extant of legislative ability and literature.

Marshall's thirty-five years of task and opportunity as a judge were unique. Coming from the heat of the House of Representatives, at a time when opposing political forces and measures were struggling for the mastery, he formed the frame of the Constitution. I say the frame of the Constitution, because although it possessed all that was needed in the charter of free government for countless generations who would stand to and abide by it, still those who made it had the wisdom not to attempt to round it out too much or to determine or foresee the application and adaptation of all the principles and limitations it ordained.

It fell to the Supreme Court then to put flesh on this gaunt and sinewy system of government which masters had made. There were but few cases before the Court. The docket, I think, bore but twelve causes awaiting argument.

With time and opportunity to consider and meditate, never enjoyed by those who came after, Marshall in his judgments reared a monument to his fame and his country which will outlast stone or brass.

Taney brought to the Bench and retained for twenty-eight years a fearlessness seasoned by years of grapple in the field of politics, when that field was filled with men who divided on great practical questions, and all fought, and none apologized for being grim in combat. It may be doubted whether we have known a braver, an abler, or a more upright judge. Prejudices he had—honest men are apt to have prejudices—but no taint of impartiality was covered by the robe he wore.

The accounts given of him by his associates in the conference room remind us of Macaulay's remark about the Puritans:

“People who saw nothing of the godly but their uncouth visages, and heard nothing from them but their groans and their whining hymns, might laugh at them. But those had little reason to laugh who encountered them in the hall of debate or in the field of battle.”

Whenever in the consultation chamber a case came to be considered, the judges who sat with him never ceased to be surprised at his complete comprehension of it, and his masterful clearness and power in its exposition. His judgments assert his courage and his genius.

Chase joined the Court after a quarter of a century of political leadership and administration, covered with distinction. He did not attain the Bench, however, till after he had made arguments in the Court, one of which Horace Binney placed among the few transcendent examples of reasoning force and faculty.

To come next after such men was the lot and the ordeal of Morrison R. Waite. Not to be dwarfed by the contrast was to be remarkable. Not to have been seriously disparaged by comparison with the men he met as his associates on the Bench is of itself ground for eulogy.

Unknown in national affairs, he had been selected by President Grant as one of the counsel of our country before the tribunal at Geneva, created by the Treaty of Washington with Great Britain. The fidelity he displayed, and the labor he performed in preparing and executing this trust, had won him the confidence of the President and of Mr. Fish, the Secretary of State.

After two attempts successively to propose a name that the Senate would approve, and after withdrawing two names, one after the other, in deference to disapproval of Senators informally expressed, President Grant proposed Mr. Waite as Chief-Justice; and as to his confirmation there was never a doubt.

He brought to his great office not only large and varied learning and experience, not only talents and probity, but simplicity and the genius of common-sense. Of ostentation he had none. If he knew impatience or pre-occupation, neither ever revealed itself on the Bench.

Like his associates, he had always time and willingness to listen alertly to every argument addressed to him; and in the respect and affectionate deference in which the Court is held no more potent or pervading feeling can be found than the grateful sense of the Bar because of the courteous audience and attentive hearing which all receive.

Chief-Justice Waite began with what may be called the grammar of the Court. Its practice, its methods, every detail of its workings, he soon knew thoroughly and exactly. This made his usefulness immediate and great.

The docket groaned under a thousand cases, infinite in variety, and many of them novel, grave, and difficult in the questions they involved.

The Constitution had undergone great changes; so had the com-

mmercial instrumentalities of the country. New crops of litigation sprung up in new fields of controversy. In all of labor and responsibility that came the Chief-Justice bore his full share. He acquitted himself faithfully and well of every duty, and so bore himself that suspicion raised no note of discord in the harmony of universal confidence.

Who can wish that more than this shall be said of him when the volume of his life is closed?

In the most majestic official station we know, Morrison R. Waite was unblemished, blameless, able, and true.

This is reason enough why Court, Bar, and people should uncover at his grave, and murmur their sorrow and respect, although he cannot hear.







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